IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23213 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALVINDERSINGH @ SHERA S/O. JAGJITSING BHATTI (PUNJABI)
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS BANNA DUTTA for MR AR SHAIKH for Petitioner.
RULE SERVED BY DS for Respondent Nos. 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 14/06/2006

ORAL JUDGMENT

This petition is filed by a friend of the detenue. By filing this petition, the petitioner has challenged the detention order of the detenue-Balvindersingh @ Shera S/o. Jagjitsing Bhatti (Punjabi) dated 11-11-2005, who is detained as a “bootlegger” under provisions of

Prevention of Anti Social Activities Act ("PASA" for short). Along with the order of detention, the detenue is also served with the grounds of detention. In the grounds of detention, there is a reference of two criminal cases pending against the detenue. Case at serial No.1 is registered with Pratapnagar Police Station, Rajkot City being Gunah Register No.83/2005. The aforesaid case is lodged under Sections 66-B, 65-A-E and Section 116 B of the Bombay Prohibition Act. Case at serial No.2 is registered with Sabarmati Police Station being Gunah Register No.5521/2005. The aforesaid case is also registered under the provisions of the Bombay Prohibition Act. It is alleged that the detenue is dealing in foreign liquor. The detaining authority after arriving at subjective satisfaction has passed the aforesaid order of detention against the detenue. According to the detaining authority, the detenue has violated the law and order and public order. It is also stated in the detention order that the activities of the detenue are prejudicial to public health.

Ms. Banna Dutta, learned advocate for the petitioner vehemently submitted that except two criminal cases, there is no other material available for coming to the conclusion that the detenue is a "bootlegger". She further submitted that no statement of any independent witness is recorded by the detaining authority for coming to the conclusion that the activities of the detenue are prejudicial to public order or even tempo of life is disturbed by his activities. She further submitted that it cannot be said that the detenue is a bootlegger, simply because two criminal cases are registered against him under the Bombay Prohibition Act and it can at the most be said that the detenue has violated provisions of law but it cannot be said that the detenue has violated public order or that his activities are prejudicial to public health. She further submitted that only because the detenue was alleged to have possessed foreign liquor, it cannot be said that his activity is prejudicial to public health. She further

submitted that it cannot be said that consumption of foreign liquor affects the public health unless there is some material on record in this behalf. It is submitted by her that the authority has not applied its mind properly and came to the conclusion that the activity of the detenue is prejudicial to public health, even when there is no material on record in this behalf. In order to substantiate her say, Ms.Dutta has relied upon the decision of the Supreme Court in District Collector, Ananthapur and another vs. V. Laxmanna reported in 2005 AIR SCW 1822. In the aforesaid case, the Supreme Court has observed as under in paragraph 7 :

> "7. We do not think this argument of the learned counsel can be accepted. If the detention is on the ground that the detenu is indulging in manufacture or transport or sale of arrack then that by itself would not become an activity prejudicial to the maintenance of public order because the same can be effectively dealt with under the provisions of the Excise Act but if the arrack sold by the detenu is dangerous to public health then under the Act, it becomes an activity prejudicial to the maintenance of public order, therefore, it becomes necessary for the detaining authority to be satisfied on material available to him that the arrack dealt with by the detenu is an arrack which is dangerous to public health to attract the provisions of the Act and if the detaining authority is satisfied that such material exists either in the form of report of the Chemical Examiner or otherwise copy of such material should also be given to the detenu to afford him an opportunity to make an effective representation."

Ms.Dutta, learned advocate for the petitioner also submitted that the detenue was already in judicial custody when order of detention was passed against him. She further submitted that the detaining authority has not stated as to on what material he came to the conclusion that on presentation of application for bail, the detenue may be released on bail. No particulars in this behalf are given in the grounds of detention.

Mr.N.D.Gohil, learned AGP is not in a position to substantiate his say that the activities of the detenue are prejudicial to public health.

It is required to be noted that in the detention order it is not mentioned as to how the activity of the detenue is prejudicial to public health and it can safely be said that the detenue may be guilty of violating law of the land but by selling foreign liquor or by possessing the same, it cannot be said that the activity of the detenue is prejudicial to public health.

Considering the aforesaid aspect of the matter and considering the fact that there is nothing to show that the activity of the detenue is prejudicial to public health, at the most it can be said that the detenue is guilty of violating law and order but it cannot be said that the activity of the detenue is prejudicial to public health. Moreover, there is nothing on the record to suggest as to on what basis the detaining authority came to the conclusion that the detenue is likely to be granted bail on presentation of the bail application. Therefore, the impugned order of detention is required to be quashed and set aside.

In view of what is stated herein above, this petition is allowed. Order of detention dated 11-11-2005 is quashed and set aside. Detenue – Balvindersingh @ Shera S/o. Jagjitsing Bhatti (Punjabi) is ordered to be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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